



NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 70759
14 June 2013

MuckRock News
DEPT MR 5715
PO Box 55819
Boston, MA 02205-5819

Dear Mr. Morisy:

This is an initial response to your Freedom of Information Act (FOIA) request dated 24 May 2013, which was received by this office on 24 May 2013, for "any letters, emails, or other communications sent or received by NSA to any representatives of Utah government agencies or policy makers regarding utility rates and taxes in connection with the NSA's Utah Data Center." This letter acknowledges that we have received your request and provides some administrative information. Your request has been assigned Case Number 70759. We have begun to process your request and will respond to you again shortly.

I have considered your request to be classified as a "representative of the media" and determined that it should be denied. The FOIA, at 5 U.S.C. 552(a)(4)(A)(ii), sets three standards that must be met for a requester to qualify as a representative of the news media:

1. Requester must be a person or entity that gathers information of potential interest (news) to a segment of the public. The FOIA defines 'news' as information that is about current events or that would be of current interest to the public.
2. Requester must use its editorial skills to turn the raw materials into a distinct work.
3. Requester must distribute that work to an audience.

I have determined that you do not meet standards 1 and 2, as listed above. The first criterion that must be met to be considered a representative of the news media is that the requester gathers the information in the public interest. Representatives of the news media normally are organized to seek out and gather information generated by public interest, not information generated by internal interests the individuals or organizations may have. This is what qualifies these individuals or organizations to be considered as members of the news media. To meet the second criterion, a requester must use its editorial skills to turn raw material into a distinct work. You have offered no information with regard to your intended use of any materials that might be released as a result of this FOIA request.

With regard to your request for a fee waiver, there is a two-pronged test a requester must satisfy to qualify for a fee waiver. First, the requested information must be in the public interest. Second, the request must not be primarily in the requester's commercial interest. The following six factors further define the two-pronged waiver test, and a requester must meet the first four factors to qualify under the public interest prong:

1. The subject of the request must concern the "operations and activities of the government."
2. The disclosure of information is "likely to contribute to an understanding of government operations and activities."
3. The disclosure of the requested information will "contribute to public understanding."
4. The disclosure is likely to contribute "significantly" to public understanding of government operations and activities.
5. The requester has a commercial interest that would be furthered by the requested disclosure.
6. Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, thereby rendering the disclosure "primarily in the commercial interest of the requester."

In analyzing these criteria, I have determined that you do not meet two of these factors. You have not provided evidence to sufficiently meet factor 3 regarding how the information will "contribute to public understanding." This factor generally means that the requester can disseminate the information to the general public. In your request, you state that the data collected will be posted to MuckRock.com. You do not demonstrate with particularity that the information will be communicated to the public. You do not describe specifically your qualifications, the nature of your research, and the purpose for which you intend to use the requested information. Specialized knowledge may be required to extract, synthesize, and effectively convey the information to the public. You do not provide evidence of past analysis on this subject matter nor any evidence of past use of materials gained through FOIA requests. Furthermore, you do not provide an indication of your ability to understand and process the information such that the public will be able to interpret your analysis of the records.

Therefore, for the reasons described above, you also do not meet factor 4. You have not shown how this information will "significantly" contribute to public understanding of government operations or activities. To warrant a waiver, the public's understanding of the information, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. Moreover, without demonstration of an expertise in the subject area, an ability to disseminate the information, and an ability to increase the public's understanding in a meaningful way, a "significant" contribution to public understanding is not likely.